

N.D.A.G. Letter to Mehrer (Nov. 1, 1988)

November 1, 1988

Mr. Owen K. Mehrer
Stark County State's Attorney
P.O. Box 310
Dickinson, ND 58601

Dear Mr. Mehrer:

Thank you for your letter of August 25, 1988, concerning Attorney General's Opinion 85-36 (1985 N.D. Op. Att'y Gen. 122) and its applicability to personal property foreclosures. I apologize for the delay in responding to you.

Attorney General's Opinion 85-36 concluded that real estate foreclosure judgments are not money judgments under North Dakota law. In analyzing N.D.C.C. chs. 32-19 and 32-19.1, the opinion determined there are two separate actions in foreclosures of real property: one for foreclosure of the property and one for a money judgment on the note. Because the actions are separate and distinct (and often only the foreclosure action is permissible), a real estate foreclosure action does not result in a money judgment.

N.D.C.C. chs. 32-19 and 32-19.1 concern only real estate mortgage foreclosures. Personal property foreclosures are governed by other statutes.

N.D.C.C. ch. 32-20 concerns foreclosure of mortgages on personal property. N.D.C.C. § 32-20-05 states as follows:

32-20-05. What judgment must state. In an action for the foreclosure of a lien on personal property, judgment in favor of the plaintiff must specify the amount due on the lien and must direct a sale of the property to satisfy the same and the costs, by a person appointed thereby, or by an officer designated therein, in the manner provided for the sale of personal property under execution, and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the judgment and costs. It also may provide for the payment of the surplus to the owner of the chattel and for the safekeeping of the surplus, if necessary, until it is claimed by him. If the defendant upon whom the summons is served personally is liable for the amount of the lien, or for any part thereof, judgment may be entered against him accordingly. A judgment for either the defendant or plaintiff must specify any amounts awarded pursuant to section 32-20-04.2.

Under certain circumstances, then, when the defendant is personally liable and has been served with the summons, a judgment for foreclosure of personal property can also be a money judgment or a judgment directing the payment of money. In such circumstances,

this judgment should be docketed as a money judgment.

In conclusion, Attorney General's Opinion 85-36 concerned only foreclosure of real estate mortgages. Because of North Dakota's strict limit on real estate mortgage deficiency judgments, the opinion concluded that real estate foreclosure judgments do not direct the payment of money. They are not money judgments.

Other foreclosure judgments, not subject to N.D.C.C. chs. 32-19 and 32-19.1, may, under certain circumstances, be money judgments. Each foreclosure judgment which is not a real estate foreclosure judgment must be examined to determine if it directs the payment of money under N.D.C.C. § 28-20-13. If so, it should be docketed as a money judgment.

Sincerely,

Nicholas J. Spaeth

cv